

UNITED STATES OF AMERICA, and
COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF ENVIRONMENTAL
PROTECTION

Plaintiffs,

v.

TEMRAC COMPANY, INC.

Defendant

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the Commonwealth of Pennsylvania (“Commonwealth”), Department of Environmental Protection, filed a Complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § § 9606 and 9607 (“CERCLA”), seeking injunctive relief and reimbursement of response costs incurred or to be incurred for response actions taken or to be taken in connection with the release or threatened release of hazardous substances at the Crossley Farm Superfund Site in Huffs Church, Hereford Township, Berks County, Pennsylvania (“the Site”).

B. In accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth on April 3, 2001 and November 5, 2004 of negotiations with potentially responsible parties regarding the Site, and has provided the Commonwealth with an opportunity to participate in such negotiations and be a party to this Consent Decree.

C. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the relevant federal natural resource trustee(s) on August 23, 2005 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to natural resources under Federal trusteeship, and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

D. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, 40 C.F.R. Part 300, by publication in the Federal Register on Tuesday, October 14, 1992. 57 Fed. Reg. 47180.

E. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, on September 27, 1994, EPA commenced a Remedial Investigation and Feasibility Study for the Site pursuant to Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), and 40 C.F.R. § 300.430.

F. EPA selected remedial action for implementation at the Site in two Records of Decision ("RODs") that were executed on June 30, 1997 and September 28, 2001. The RODs include EPA's explanation for any significant differences between the final plans and the proposed plans as well as responsiveness summaries which address the public comments. Notice of the final plans was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

G. Defendant Temrac Company, Inc. ("Temrac") contends that it has a limited ability to pay the Response Costs incurred and to be incurred at the Site, and has provided to EPA certain financial and insurance information (identified in Appendix B to this Consent Decree) for review in support that contention, intending that EPA rely on such information.

H. EPA has reviewed the financial and insurance submissions of the Defendant and, in reliance on the truth and completeness of those submissions, has determined that Temrac has a limited ability to pay the United States' Response Costs at the Site.

I. Temrac was an insured under several insurance policies issued to the Sunbeam Corporation (now known as American Household, Inc.). Temrac participated as a plaintiff in the Insurance Litigation (as that term is defined in Section IV of this Consent Decree), in which American Household, Inc. and affiliated entities sued various insurers with respect to environmental liabilities at over 60 sites, including the Crossley Farm Site. Through various settlements, the plaintiffs in the Insurance Litigation collectively recovered sums which were paid to American Household, Inc., the principal insured and Temrac's corporate parent.

J. American Household, Inc. owns 100% of the stock of Temrac. On January 24, 2005, Jarden Corporation acquired 100% of the stock of American Household, Inc. The United States and the Commonwealth have not alleged that either American Household, Inc. or Jarden Corporation arranged for the disposal of hazardous substances at the Site. American Household, Inc. and Jarden wish to resolve any potential claims by the United States pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3301 *et seq.*, arising out of the recovery of funds in the Insurance Litigation.

K. Defendant does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the Complaint, nor does Defendant acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or

substantial endangerment to the public health or welfare or the environment.

L. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607 and 9613(b). Solely for the purposes of this Consent Decree and the underlying complaint, Defendant waives all objections and defenses that it may have to the jurisdiction of the Court or to venue in this District. Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the Commonwealth, and upon Defendant and its successors and assigns. Any change in ownership or corporate or other legal status including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.

"Effective Date" shall be the date upon which this Consent Decree is entered by the Court.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Insurance Litigation" shall mean the claims and counterclaims asserted by the parties in *Sunbeam-Oster Company, Inc. et al. v. Aetna Casualty & Surety Co., et al.*, No. 93 CV 007941 (Cir. Ct. Milwaukee County, WI) and *Sunbeam Corporation v. Liberty Mutual Insurance Company, et al.*, No. GD 95-13947 (Court of Common Pleas, Allegheny County, PA).

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States, the Commonwealth of Pennsylvania, Department of Environmental Protection, and the Defendant.

"Plaintiffs" shall mean the United States and the Commonwealth of Pennsylvania, Department of Environmental Protection.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.*, also known as the Resource Conservation and Recovery Act.

"Response Costs" shall mean all costs incurred and to be incurred pursuant to CERCLA in connection with the Site.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Site" shall mean the Crossley Farm Superfund Site, also known as the Hereford Ground Water Site, encompassing approximately 209 acres located in a rural area approximately 7

miles southwest of Allentown, in the Huffs Church community of Hereford Township, Berks County, Pennsylvania, and generally shown on the map included in Appendix A; and including the areal extent of contamination originating from such location, and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

"State" or "Commonwealth" shall mean the Commonwealth of Pennsylvania and its departments and agencies, including, without limitation, the Pennsylvania Department of Environmental Protection.

"United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Defendant to make a cash payment as provided in Section VI herein, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, under the Federal Debt Collection Act, 28 U.S.C. §§ 3301-3308, and to resolve civil claims by the Commonwealth for response costs and injunctive relief with regard to the Site, as provided in the Covenants Not to Sue by EPA and the Commonwealth in Section VIII, and subject to the Reservations of Rights by EPA and the Commonwealth in Section IX.

5. Nothing in this Consent Decree shall affect any discharge which American Household, Inc. received under paragraph 7 of the Order of November 27, 2002 of the U.S. Bankruptcy Court for the Southern District of New York, confirming the Plan of Reorganization in *In re Sunbeam Corp.*, No. 01-40291 (AJG) (Bankr. S.D.N.Y.) ("Order"), or shall prevent American Household, Inc. from enforcing the injunction in paragraph 7 of the Order against any person or entity.

VI. PAYMENT OF RESPONSE COSTS

6. Within 30 days of entry of this Consent Decree, Defendant shall pay to the United States the sum of \$1,916,448.77.

7. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures, referencing the Site name, EPA Region III and Site/Spill ID # 03S2, the docket number for this action to be assigned by the Clerk of this Court, and DOJ Case Number 90-11-2-07484.

8. The total amount to be paid to the United States by Defendant shall be deposited by EPA in the Crossley Farm Superfund Site Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

9. At the time of payment to the United States, Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions) and to the two parties listed in this Paragraph. Such notice shall reference the Site name, EPA Region III, Site/Spill ID # 03S2, and the docket number for this action.

Docket Clerk (3RC00)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Barbara Borden (3PM30)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

10. Within 30 days of entry of this Consent Decree, Defendant shall pay to the Commonwealth \$212,938.93, plus any interest that may accrue thereon, subject to the terms provided in this Consent Decree. All payments to the Commonwealth shall be by certified check or the like made out to the "Commonwealth of Pennsylvania" and forwarded to:

Environmental Cleanup Program Manager
Southcentral Regional Office
Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110

VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

11. Interest on Late Payments: If Defendant fails to make any payment required by this Consent Decree by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

12. Stipulated Penalties:

a. Payments Under Paragraphs 6 and 10: Defendant shall be liable for stipulated penalties in the amount of \$1,000 per day for each day that any payment required by Paragraphs 6 and 10 is late.

b. Other Requirements: Defendant shall be liable for stipulated penalties in the amount of \$500 per day for each day that Defendant fails to comply with a requirement of this Consent Decree other than a requirement to pay the United States or the Commonwealth under Paragraphs 6 and 10.

c. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall identify the name and address of the party(ies) making payment, the Site name, EPA Region III, Site/Spill ID # 03S2, and the docket number for this action, and shall be sent to:

United States Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

A copy of the transmittal letter shall be sent to the parties listed in Section XIV, Paragraph 9, and Paragraph 10.

d. Stipulated penalties shall accrue as provided above regardless of whether EPA has notified Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

13. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Defendant's payment of stipulated penalties shall not excuse Defendant from performance of any other requirements of this Consent Decree.

VIII. COVENANTS NOT TO SUE BY PLAINTIFFS

14. Covenant as to Defendant: Except as specifically provided in Section IX (Reservation of Rights by United States and Commonwealth), the United States covenants not to sue or to take administrative action against the Defendant, American Household, Inc., and Jarden Corporation pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. § § 9606 and 9607(a), with regard to the Site. With respect to present and future liability, these covenants shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Requirements of Consent Decree). These covenants not to sue are also conditioned upon the accuracy and completeness of the financial and insurance information provided to EPA by Defendant, identified in Appendix B to this Consent Decree. If the financial or insurance information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Defendant shall forfeit all payments made pursuant to this Consent Decree and these covenants not to sue and the contribution protection in Paragraph 24 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Defendant's

false or materially inaccurate information. These covenants not to sue extend only to Defendant, American Household, Inc., and Jarden Corporation.

15. Except as provided in this Paragraph, and subject to the reservations of rights in Paragraph 17, the United States hereby covenants not to sue Defendant, American Household, Inc., or Jarden Corporation for all claims which it may have now or in the future under the Federal Debt Collection Act, 28 U.S.C. §§ 3301-3308, or other applicable law, arising from the transfer of funds recovered in the Insurance Litigation with respect to any claims that the Defendant is liable for costs incurred or to be incurred by the United States in connection with the Site. Nothing in this Paragraph shall affect any rights by the United States to enforce the requirements of this Consent Decree including, without limitation, the right to demand stipulated penalties or assess interest.

16. Subject to the reservation of rights in Paragraph 18, the Commonwealth covenants not to sue or take administrative action against Defendant, American Household, Inc., or Jarden Corporation for response costs, response actions, and injunctive relief for Past and Future Response Costs, or for any claims arising from the transfer of funds recovered in the Insurance Litigation. These covenants not to sue shall take effect upon receipt by the Commonwealth of all payments required by Section VI., Paragraph 10 (Payment of Response Costs) and of any amount due under Section VII (Failure to Comply with Requirements of Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Defendant, American Household, Inc., and Jarden Corporation, does not extend to any other person, and shall terminate upon Defendant's failure to meet any of the requirements of this Consent Decree.

IX. RESERVATION OF RIGHTS BY UNITED STATES AND COMMONWEALTH

17. General Reservations of Rights by United States: The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendant with respect to all matters not expressly included within the Covenants Not to Sue by United States in Paragraphs 14 and 15. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Defendant with respect to:

- a. liability for failure of Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant

outside of the Site.

Nothing in this Consent Decree shall affect any discharge which American Household, Inc. received under paragraph 7 of the Order of November 27, 2002 of the U.S. Bankruptcy Court for the Southern District of New York confirming the Plan of Reorganization in *In re Sunbeam Corp.*, No. 01-40291 (Bankr. S.D.N.Y.) ("Order") or shall prevent American Household, Inc. from enforcing the injunction in paragraph 7 of the Order against any person or entity.

18. Reservations of Rights by the Commonwealth: The Commonwealth's covenants not to sue in Paragraph 16 shall not apply to the following claims against Defendant for:

- a. failure to meet the requirements of this Consent Decree;
- b. past, present, or future releases or threatened releases of hazardous substances or contaminants outside the boundaries of the Site;
- c. past, present, or future violations of Federal or State criminal law;
- d. natural resource damages.

With regard to all matters expressly addressed in this Consent Decree, the Commonwealth specifically reserves all rights to institute equitable, administrative, civil, and criminal actions for any past, present, or future violation of any statute, regulation, permit, or order, or for any pollution or potential pollution to the air, land, or waters of the Commonwealth against persons not parties to this Consent Decree.

X. COVENANT NOT TO SUE BY DEFENDANT

19. Except for actions to enforce this Consent Decree, Defendant covenants not to sue and agrees not to assert any claims or causes of action against the Commonwealth and the United States, or their contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the Commonwealth of Pennsylvania, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States or the Commonwealth pursuant to sections

107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past or Future Response Costs;

d. any claim against the Commonwealth pursuant to the Hazardous Sites Cleanup Act, 35 P.S. § 6020.101 *et seq.*

20. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

21. Defendant agrees not to assert any claims and to waive all claims or causes of action it may have for all matters relating to the Site, including claims for contribution, against any person where the person's liability to Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials. The waiver in this Paragraph shall not apply with respect to any defense, claim, or cause of action that Defendant may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

22. American Household, Inc. And Jarden Corporation covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Crossley Farms Superfund Site, as set forth in the Declaration of Covenant executed by American Household, Inc. and Jarden Corporation and attached to this Consent Decree as Appendix C.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

23. Except as provided in Paragraphs 14, 15, 16, and 21, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraphs 14, 15, 16, and 21, the Parties expressly

reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site, against any person not a Party hereto.

24. The Parties agree, and by entering this Consent Decree this Court finds, that Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the Commonwealth, or any other person. The 'matters addressed' in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree, in the event that the United States asserts rights against Defendant coming within the scope of such reservations.

25. Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

26. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth for injunctive relief, recovery of response costs, or other relief relating to the Site, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by the United States or the Commonwealth set forth in Section VIII.

XII. ACCESS TO INFORMATION

27. Defendant shall provide to EPA, upon request, copies of all records, reports, or other recorded information ("records") within its possession or control or that of its contractors or agents relating to activities at the Site, to the Insurance Litigation, or to the implementation of this Consent Decree; including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

28. Confidential Business Information and Privileged Documents:

a. Defendant may assert business confidentiality claims covering part or all of the records submitted to the United States under this Consent Decree to the extent permitted by, and in accordance with, Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Defendant that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Defendant.

b. Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege in lieu of providing records, it shall provide the United States with the following: (1) the title of the record, (2) the date of the record, (3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record, (4) the name and title of each addressee and recipient, (5) a description of the subject of the record, and (6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to the United States in redacted form to mask the privileged information only. Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

29. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

30. Until two (2) years following the date of entry of this Consent Decree, Defendant shall preserve and retain all records now in its possession or control, or which may come into its possession or control, that relate in any manner to response actions taken at the Site, to the liability of any person for response actions or response costs at or in connection with the Site, or to any requirement of this Consent Decree, regardless of any corporate document retention policy to the contrary.

31. After the conclusion of the document retention period in the preceding Paragraph, Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any records, and, upon request by EPA or DOJ, Defendant shall deliver any such records to EPA. Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the United States with the following: (a) the title of the record, (b) the date of the record, (c) the name, title, affiliation

(e.g., company or firm), and address of the author of the record, (d) the name and title of each addressee and recipient, (e) a description of the subject of the record, and (f) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

32. Defendant hereby certifies that to the best of its knowledge and belief and after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records relating to its potential liability regarding the Site since notification of Defendant's potential liability by the United States or by the Commonwealth, or since the filing of suit against it regarding the Site. Defendant further certifies that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. NOTICES AND SUBMISSIONS

33. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Commonwealth, and Defendant.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ No. ~~90-11-3-07651~~ ^λ

As to EPA:

Gail P. Wilson (3RC41)
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Joanne Marinelli (3HS12)
Compliance Officer
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

As to the Commonwealth

Martin Siegel
Assistant Counsel
Office of Chief Counsel
Pennsylvania Department of Environmental Protection
909 Elmerton Avenue
Third Floor
Harrisburg, PA 17110-8200

As to Defendant:

David B. Hird
Weil, Gotshal & Manges LLP
1300 Eye Street, N.W.
Suite 900
Washington, DC 20005

Marc Clements
Vice President, Temrac Company, Inc.
c/o Jarden Corporation
2381 Executive Center Drive
Boca Raton, FL 33431

XV. RETENTION OF JURISDICTION

34. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDICES

35. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is a Site Map.

"Appendix B" is a list identifying financial and insurance information provided to EPA by Defendant.

"Appendix C" is a Declaration of Covenant executed by Jarden Corporation and American Household, Inc.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

36. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States and the Commonwealth reserve the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Consent Decree without further notice.

37. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

38. Each undersigned representative of the Defendant, of the United States, and of the Commonwealth, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

39. Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

40. Defendant shall identify on the attached signature page the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Defendant hereby agrees to accept service in that manner, and to waive the formal service requirements set forth in Fed. R. Civ. P. 4, and in any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Defendant need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XIX. FINAL JUDGMENT

41. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment.

under Fed. R. Civ. P. 54 and 58.

SO ORDERED, this _____ day of _____, 2008.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Temrac*, relating to the Crossley Farm Superfund Site.

FOR THE UNITED STATES OF AMERICA:

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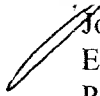
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Appendix A

SITE MAP

Appendix A

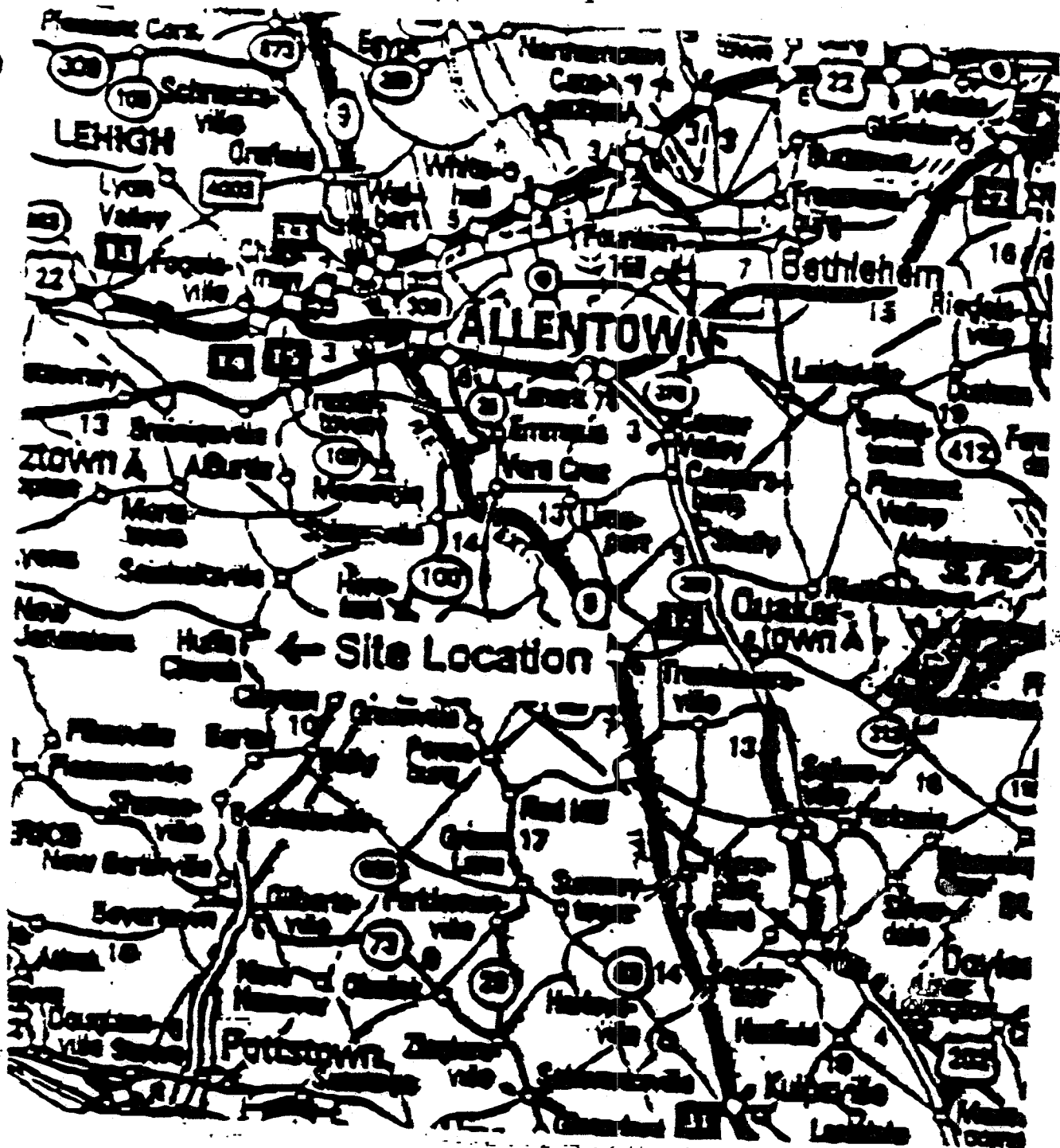


FIGURE 1
SITE LOCATION MAP

Appendix B

1. Excess Insurance Policies concerning Temrac and Crossley Farm Sites sent by Temrac to Region III, EPA on 2/27/02.
2. March 18, 2004 Letter with Enclosures from David B. Hird, Esq. to Gail P. Wilson, Assistant Regional Counsel.
3. May 14, 2004 Letter with Enclosures from David B. Hird, Esq. to Gail P. Wilson, Assistant Regional Counsel.
4. July 26, 2004 Letter with Enclosures from David B. Hird, Esq. to Gail P. Wilson, Assistant Regional Counsel.
5. August 26, 2004 Letter with Enclosures from David B. Hird, Esq. to Gail P. Wilson, Assistant Regional Counsel.
6. Written materials distributed and discussed at November 3, 2004 meeting in Philadelphia between Temrac and Region III, EPA.
7. March 2, 2005 Letter from David B. Hird, Esq. To Gail P. Wilson, Assistant Regional Counsel.
8. Chart distributed and discussed at June 28, 2005 meeting in Philadelphia between Temrac and Region III, EPA.
9. August 8, 2007 Letter with Enclosures from David B. Hird, Esq. to Gail P. Wilson, Assistant Regional Counsel.

Appendix C

Declaration of Covenant

UNITED STATES OF AMERICA, and
COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiffs,

v.

TEMRAC COMPANY, INC.,

Defendant.

1. American Household, Inc. (“AHI”), and Jarden Corporation (“Jarden”), by their undersigned representative, grant a Covenant to the United States in the Consent Decree entered into by the United States, the Commonwealth of Pennsylvania (“State”), and Temrac Company, Inc. in the above-captioned action (“the Consent Decree”).

a. any direct or indirect claims for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) Sections 106(b)(2), 107, 111, 112, 113 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613; or,

c. any claims arising out of the United States' or the State's response activities at the Site, including claims based on U.S. EPA's and the State's selection of response actions, oversight of response activities or approval of plans for such activities.

3. AHI and Jarden agree not to oppose entry of the Consent Decree, or to challenge the terms of the Consent Decree, or the Court's jurisdiction to enter and enforce the Consent Decree and this Declaration of Covenant. Failure of AHI and/or Jarden to abide by this Paragraph renders the rights, covenants, and protections applicable to it under the Consent Decree null and void.

4. The undersigned representative of AHI and Jarden certifies that she is fully authorized to agree to the terms and conditions herein, and to execute and legally bind AHI and Jarden to these terms and conditions. This Declaration of Covenant shall be appended to, and filed with, the Consent Decree in the above-captioned action.

July 23, 2008
Dated

LORELEI JOY BORLAND
Vice President, Environmental and Regulatory
Affairs

American Household, Inc.
7 Bayberry Road
Elmsford, NY 10523

Vice President - Environmental & Regulatory
Affairs

Jarden Corporation
7 Bayberry Road
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